Supreme Court, U.S.
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No.

In the Supreme Court of the United States

Janet L. Lee, Petitioner

v.

Sun Life Assurance Company
of Canada

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

SUPPLEMENTAL APPENDIX

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SUPPLEMENTAL

APPENDIX

SUPPLEMENTAL APPENDIX A

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

JANET L. LEE	**CIVIL ACTION NO.**
VERSUS	**97-0032**
SUN LIFE	**JUDGE TUCKER**
ASSURANCE CO.	**L. MELANCON**

MEMORANDUM RULING

Before the Court are cross motions for summary judgment filed by the plaintiff and the defendant. For the following reasons, the motion for summary judgment filed by the plaintiff will be denied and the motion for summary judgment filed by the defendant will be granted.

Background

This is an action arising from the denial of benefits under an Employment Retirement Income Security Act (ERISA) plan. *29 U.S.C. §1001 et seq.* Plaintiff was employed by State National Life Insurance Company as a secretary. *(R. 35 ¶2; 41, ¶1).* In her complaint, plaintiff claims she became disabled in September 1993 as a result of cervical and lumbar surgeries[1] and seeks disability benefits

[1] Plaintiff's medical records indicate she had a posterior cervical fusion on October 16, 1990 and a lumbar spine fusion with insertion of Texas Scottish Rite Instrument on September 8, 1993. *(R. 36,no. 83).*

under an ERISA plan ("Plan") funded by a group disability insurance policy issued to her employer by Sun Life, Policy No. 27866 ("Policy). *(R.1, ¶3; R.35, ¶4; 41, ¶2).* The Policy contains the following definition:

> An Employee is totally disabled if he is in a continuous state of incapacity due to illness which:
>
> 1. while it continues throughout the Elimination Period and during the following 24 months of incapacity, prevents him from performing all of the material duties of his Regular Occupation; and
>
> 2. while it continues thereafter, prevents him from engaging in any occupation for which he is or becomes reasonably qualified by education, training or experience.

(R. 35, ¶5; 41, ¶6; Policy, pp. 5-6)

In February, 1994, Sun Life received a claim for long term disability benefits on behalf of plaintiff. *(Id. at ¶6; ¶3).* Sun Life also received a statement of plaintiff's attending physician, Charles R. Billings, M.D., medical information from the hospital where plaintiff had her fusions in

September, 1993 and a completed Rehabilitation Questionnaire from plaintiff. *(R. 35, ¶¶7-10).* Plaintiff's job description received from her employer described plaintiff's job as involving the following: standing (one hour); walking (one hour) and sitting (six hours); occasional (¼ to 2½ hours)' bending/stooping, reaching above shoulder level, kneeling, balancing, pushing/pulling, usual lifting (under 5 pounds) and maximum carrying (10 pounds). *(Id. at ¶11).* Pursuant to the provisions of the Policy, Sun Life approved plaintiff's claim and paid disability payments to plaintiff from March 7, 1994 until March 16, 1996. *(R.20, 9/21/98 Ruling granting defendant's motion for partial summary judgment; 41 ¶¶4&5).*

On November, 1995, Sun Life had a medical review of plaintiff's claim for benefits performed in which the medical reviewer found that as plaintiff's fusion had healed and was solid, she was apparently no longer totally disabled after November 1, 1994. *(R. 35, ¶¶22&23).* In a letter dated December 19, 1995, Sun Life informed plaintiff that on March 27, 1996, she would have received benefits for 24 months and beginning at that time, she would be required to provide evidence of total disability from "any occupation" under the terms of the Policy *(Id. at ¶24).* Sun Life requested and received supplemental information to support plaintiff's continuing claim of total disability as well as additional records from Dr. Billings. *(Id. at ¶¶ 13-21, 25-29; R. 41, ¶¶8&9).*

In a letter dated April 29, 1996; Sun Life advised plaintiff that it was denying her claim for long term disability benefits beyond the 24 month "own occupation" period. *(Id. at ¶30;¶7).* Plaintiff appealed the decision to deny her claim for further benefits. *(R. 35, ¶31).* Sun Life referred plaintiff's claim for an independent medical records review to George McManama, Jr., M.D. and in a letter dated July 24, 1996, Sun Life informed plaintiff of its decision to affirm its previous denial of plaintiff's claim for further total disability benefits. *(Id. at ¶¶32-34).* Plaintiff appealed Sun Life's decision reaffirming the denial of plaintiff's claim for benefits, submitted medical records from Dr. Billings and, by letter dated September 20, 1996, submitted additional x-rays to Sun Life. *(Id. at ¶36).* On November 11, 1996, Sun Life Advised plaintiff that the x-rays were not sufficient and that she needed to submit evidence to counter the independent medical record review. *(Id. at ¶37).* Plaintiff filed the instant action on January 14, 1997, in the Nineteenth Judicial District Court for East Baton Rouge Parish. On January 14, 1997, defendant filed a Notice of Removal to this Court. *(R.1).* On September 21, 1998, the Court granted Sun Life's motion for partial summary judgment finding that plaintiff's disability policy is covered by ERISA and dismissing plaintiff's state law claims under Louisiana Revised Statute 22:657, as preempted by ERISA. *(R.20)*

Summary Judgment Standard

A motion for summary judgment shall be granted if the pleadings, depositions, and affidavits submitted show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. *Fed. R. Civ. P.56.* Once the movant produces such evidence, the burden shifts to the respondent to direct the attention of the court to evidence in the record sufficient to establish that there is a genuine issue of material fact requiring a trial. *Celotex Corp. v. Catrett*, 477 U.S. 317, 322-23 (1986). The responding party may not rest on mere allegations made in the pleadings as a means of establishing a genuine issue worthy of trial. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248-49 (1986). If no issue of fact is presented and if the mover is entitled to judgment as a matter of law, the court is required to render the judgment prayed for. *Id.* Before it can find that there are no genuine issues of material fact, however, the court must be satisfied that no reasonable trier of fact could have found for the non-moving party. *Id.*

Analysis

Sun Life's decision that Lee is not totally disabled as defined by the Plan is a factual determination subject to review by the court under

an abuse of discretion standard. *Meditrust Financial Services Corp. v. The Sterling Chemicals, Inc.*, 168 F.3d 211, 213 (5th Cir. 1990). In reviewing a decision for abuse of discretion, the court considers whether the decision was arbitary or capricious. *Sweatman v. Commercial Union Ins. Co.*, 39 F.3d 594, 601 (5th Cir. 1994). "When reviewing for arbitrary and capricious actions resulting in an abuse of discretion, we affirm an administrator's decision if it is supported by substantial evidence. A decision is arbitrary only if 'made without a rational connection between the known facts and the decision or between the found facts and the evidence'." *Meditrust*, 168 F.3d at 215 *quoting Bellaire Gen. Hosp. v. Blue Cross Blue Shield*, 97 F.3d 822, 828-29 (5th Cir. 1996). Substantial evidence is "more than a mere scintilla. It seems such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *Girling Health Care, Inc. v. Shalala*, 85 F.3d 211, 215 (5th Cir. 1996) *quoting Richardson v. Perales*, 402 U.S. 389, 401 (1971). A federal court owes "due deference to an administrator's factual conclusions that reflect a reasonable and impartial judgment." *Pierre v. Connecticut Gen. Life Ins. Co.*, 932 F.2d 1552, 1562 (5th Cir. 1991). The Court's review is limited

to administrative record before Sun Life. *Vega v. National Life Ins. Serv., Inc.*, 188 F.3d 287, 299 (5th Cir. 1990)[2]

Sun Life asserts its decision to deny plaintiff's claim for disability benefits beyond the 24-month "regular occupation" period must be upheld as a matter of law as there is compelling record evidence to support Sun Life's determination that plaintiff was capable of performing sedentary work and therefore was not totally disabled from "any occupation." *(R. 36).* Plaintiff contends that Sun Life's decision to deny her further long term disability benefits after her first 24 months of disability is contrary to the weight of medical evidence provided by her treating physician, Dr. Billings, that her impairments precluded her from returning to gainful employment, and is therefore an abuse of discretion. *(R. 42).* Plaintiff claims that Sun Life should have greater weight to the opinions of her treating physician, Dr. Billings, than it have to Sun Life's medical consultant, Dr. McManama, and also points out that Dr. McManama did not actually examine plaintiff, but

[2] Although plaintiff suggests that the Court should consider plaintiff's April 18, 2000 affidavit as well as plaintiff's contentions regarding Dr. Diodene's February, 1995 report and the Social Security Administration's decision, this evidence is not part of the administrative record.

simply reviewed her medical records.[3]

In making its decision to terminate plaintiff's disability benefits on March 27, 1996, the Sun Life relied on the medical information from plaintiff's treating physician, Dr. Billings, as well as Dr. George McManama, Jr., an orthopedic surgeon who Sun Life had retained to perform a medical records review. *(R. 36, Plaintiff's Medical Records).* In his Attending Physicians' Statement submitted with plaintiff's February, 1994 claim for long term disability benefits, Dr. Billings diagnosed plaintiff with lumbar and cervical spondylosis following fusion surgery. In his initial report to Sun Life, Dr. Billings reported that plaintiff had a Class 5 physical impairment, meaning a "severe limitation of functional capacity; incapable of minimal (sedentary) activity" and would be totally disabled for one year following the surgery. *(R. 35, Medical Record no. 230-31).* Sun Life approved plaintiff's claim for long term disability after receiving Dr. Billings Attending Physician's Statement. Sun Life requested and received additional information and reports from Dr. Billings to evaluate plaintiff's benefits claim: (1)November 1, 1994, "radiographs of the lumber spine revealed the hardware [related

[3] While plaintiff contends that Sun Life, as the plan administrator, had a conflict of interest in this matter, plaintiff merely alleges that the fiduciary is an insurance company and fails to offer any evidence that a conflict actually existed or had any impact on Sun Life's decision to terminate benefits.

to plaintiff's laminectomy and fusion] to be in place satisfactorily, with the fusion to be solid" *(Id. at n. 78);* (2) January 10, 1995, plaintiff was walking approximately two miles per day and there was no evidence to neurovascular impairment; "permanent restrictions in activities remain in effect, including no overhead work, no work with the arms extended, no heavy lifting, no repetitive bending or stooping, and no prolonged standing or sitting" *(Id. at 77);* (3) March 31, 1995, plaintiff "remains active despite her discomfort"; "permanent restrictions in activities remain in effect, including no overhead work, no work with the arms extended, no heavy lifting, no repetitive bending or stooping, and no prolonged standing or sitting" *(Id. at 76).*

After informing plaintiff that she would be required to provide evidence of total disability from " any occupation" in order to receive benefits after March 27, 1996, on February 6, 1996 Sun Life received a supplemental statement prepared by Dr. Billings on January 29, 1996 which stated that plaintiff had a Class 5 impairment and was totally disabled from her own job and "any other job." *(Id. at 62).* On March 5, 1996, March 16, 1996 and April 19,1996, Sun Life requested additional medical information from Dr. Billings, including current restrictions and limitations and objective evidence thereof. *(Id. at 54, 47, 46).* In a report on

April 22, 1996, Dr. Billings stated "[t]his patient should be considered sufficiently physically impaired to preclude return to gainful employment. Permanent restrictions in activities remain in effect, including no heavy lifting, no repetitive bending or stooping and no prolonged standing or sitting." *(Id. at 43).* Dr. Billings' supplemental report received on April 23, 1996 stated "[plaintiff] was seen again in the office on April 9, 1996, for follow up regarding cervical and lumbar spondylosis. Since the last visit, her back pain has predominated and interferes with her activities.... There has been no intervening trauma.... The repeat orthopaedic examination revealed restriction in lumbar spine range of motion. Straight leg raising of 70 degrees when alternating legs produced pain in the back radiating into the left lower extremity. Pulses were equal in both feet.... The patient should be considered sufficiently physically impaired to preclude return to gainful employment. *(Id. at 42).*

Upon reviewing plaintiff's appeal of its decision to deny her claim for long term disability benefits beyond 24-month months, Sun Life determined that further medical review was necessary to evaluate plaintiff's condition and referred plaintiff's claim for an independent medical records review to Dr. George McManama, Jr., an orthopedic surgeon. *(Id. at 14, 22-24, 26).* Dr. McManama reviewed plaintiff's medical records and on July 22, 1996 provided his findings in a report to Sun Life.

Dr. McManama determined that "[plaintiff] appears to have adequate fusion in both the cervical and lumbar spines. I could not relate her subjective complaints to any objective evidence of pseudoarthrosis on her x-rays. There is loosening of the pedicle screw at S1, but that is unrelated to any symptoms that she has at this time. She has an adequate fusion of the lumbar spine. It is my feeling that [plaintiff] is certainly not totally disabled, based upon my review of her medical records and x-rays. She appears capable of sedentary work that does not involve excessive bending and stooping. I reviewed her job description and it appears to me that she should be able to perform the duties of a secretary. It also appears that Dr. Billings feels that she similarly is only restricted from heavy lifting and repetitive bending and stooping." *(Id. at 22-24).*

Sun Life's decision that plaintiff was not totally disabled as defined by the Plan is supported by Dr. McManama's report determining that plaintiff was capable of performing sedentary work, and therefore, was not totally disabled from performing "any occupation," as well as the medical reports of Dr. Billings. As determined by Dr. Billings in his January 10, 1995 report and by Dr. McManama, the objective evidence confirmed that plaintiff's fusion was solid. Dr. McManama could not relate plaintiff's subjective complaints to any objective evidence of pseudoarthrosis on her x-rays. Further

Dr. McManama specifically reported that plaintiff was not totally disabled and that "she appears capable of sedentary work that does not involve excessive bending and stooping." While Dr. Billings continued to state in his April 22, 1996 report that plaintiff "should be considered sufficiently physically impaired to preclude return to gainful employment," the only restrictions he placed on plaintiff's activities were "no heavy lifting, no repetitive bending or stooping and no prolonged standing or sitting."

Sun Life considered all of the evidence in the administrative record. It made a permissible choice to follow the opinion of the consultant it retained, rather than Lee's treating physician. Sun Life had no duty to give the opinions of her treating physician or physicians who actually examined her greater weight. *See Salley v. E.I. DuPont de Nemours & Co.*, 966 F.2d 1011, 1016 (5th Cir. 1992).

The sole issue is whether Sun Life abused its discretion in denying Lee's claim. *Pierre*, 932 F.2d at 1559, 1562. The record provides that Sun Life adequately investigated Lee's condition and analyzed all of her records. When Lee submitted additional records, they were appropriately considered. The Court finds that Sun Life did not abuse it discretion by denying Lee's claim. The administrative record contains substantial evidence to show that Lee is capable of performing

some sedentary work for which she is qualified.

Conclusion

Considering the issue that is before the Court, whether the plan administrator abused its discretion in finding that Janet Lee was not totally disabled as of March 27, 1996, the record reflect that the plan administrator's determination was appropriate. According, plaintiff's motion for summary judgment will be denied and defendant's motion for summary judgment will be granted. /s/

COPY SENT
DATE 06-29-00
BY /s/ RW
TO: /s/ TLM
Clerk, USDC, MDLA (FAX)

FILED
June 28, 2000
/s/Ronald G. Weathus
Deputy Clerk, U.S. District Court
Middle District of Louisiana
Baton Rouge, La.

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

JANET L. LEE	**CIVIL ACTION NO.**
VERSUS	**97-0032**
SUN LIFE	**JUDGE TUCKER**
ASSURANCE CO.	**L. MELANCON**

JUDGMENT

In accordance with the Memorandum Ruling issued on this date,

IT IS ORDERED that the Motion for Summary Judgment, filed by the plaintiff [Rec. Doc. 40] is DENIED and the Motion for Summary Judgment, filed by the defendant [Rec. Doc. 34] is GRANTED, and that the judgment is entered in favor of the defendant, Sun Life Assurance Company of Canada, and against the plaintiff, Janet L. Lee.

Thus done and signed this 28th day of June, 2000 at Lafayette, Louisiana.

/s/
Tucker L. Melancon
United States District Judge
Sitting by Designation

COPY SENT
DATE 06-29-00
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Filed June 28, 2000
/s/ Ronald G. Weathus
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U.S. District Court
Middle District of LA.
Baton Rouge, La.